Workmans Compensation Act, Presentation of Claim —Claim for Compensation, Presentation of.

Defects in the presentation of claims for compensation under the Workman's Compensation act may be waived, and when so waived the claim should be considered on its merits.

October 4, 1920.

Hon. A. E. Spriggs, Chairman,
Industrial Accident Board,
Capitol.

Dear Sir:

You have submitted to me your office files in the matter of the claim of one Edward Nyberg for compensation for the alleged loss of sight in one eye, occasioned, as contended by him, by reason of injury received while in the employ of the A. C. M. Co. at Great Falls.

These files consist of correspondence carried on between Mr. G. G. Harris, an attorney at law, representing Mr. Nyberg, the Board and certain representatives of the A. C. M. Co. Also the certificates of several physicians including one from Mayo Brothers of Rochester, Minnesota, who have made an examination of the eye claimed to be injured. It is the opinion of these specialists that Mr. Nyberg is now suffering loss of vision by reason of a detached retina and that a detached retina may result from injury to the eye.

Assuming that the Board has determined that the claimant did in the course of his employment suffer an injury to his eye and that the nature of this injury was such as to have caused the retina to become detached, the only questions remaining would be, first, as to whether the employer had actual knowledge of the injury at the time of its happening or notice thereof within sixty days from its occurrance, as provided in Section 17G of the Workmens Compensation Act, and, second, whether claim was presented within six months from the date of happening of the accident, as provided in Section 10A of this Act.

There is no showing in the files that notice in writing of the injury, as required by Section 17G, was ever given. There is, however, in the various letters a claim that at the time of the injury the employee went to a first aid man for treatment. It also appears that it was the duty of this person to keep record of and report all injuries treated. It would therefore seem that where such a person was employed and a part of his duties were to give first aid to injured, and to report all injuries called to his attention, he would be such an agent as having actual knowledge of the injury would be equivalent to service of notice, and the employer would be bound by such notice, even though no record was actually made by such person.

There is no definite showing of just when this accident occurred, but assuming that the injury was called to the attention of the first aid man and that his duties required him to treat and report such injury, and therefore actual notice to whom was notice to the employer, there is still the question of whether a claim was made under the provisions of Section 10A above referred to. Notice of injury and presentment of claim are two separate and distinct acts.

Section 10A, prior to amendment on March 4th, 1919, did not require the claim to be in any particular form. However, as amended, a claim must now be presented in writing, under oath to the employer, the insurer, or the Board within six months from the date of the happening of the accident. No contention is made that any claim was ever presented in this form. The letter of Mr. Harris, dated June 3rd, 1920, addressed to the Board, is in part as follows:

> "He, (Nyberg) was working in the welding department over a bright light and about the latter of December, 1919, his eyes failed him. During the period of his employment he also states that he received a blow upon the eye ball. * * * * * In due season he applied to the claim department of this company for compensation, but after some consideration of the claim by them, it was rejected. I was recently advised by them that if I would write them a letter upon it, the matter would be taken up with their head office in Butte."

A copy of this letter was sent to Mr. Madden, claim agent for the A. C. M. Co., and he replied thereto on June 7th, in part as follows:

> "The case looks to me as if Nyberg were trying to put over a fraudulent claim. His first claim was that the bright light used in brazing over which he was working was the

> cause of his condition. He worked about a year at this job. * * * * * Later on he learned that the condition of the eye was caused by a detached retina and that this condition could not be caused by the light, as claimed, and that it must be either from a blow or disease. He claimed to have been struck in the eye by a piece of wire some two months previous to the time he spoke of the light having caused that injury."

Mr. Madden also calls attention to the indefinite statement in Mr. Harris' letter as to the date of the happening of the accident. Mr. Madden does not state at what time the claim was made by Nyberg that his condition was caused by the light.

In Mr. Madden's letter of June 20th, he says it was along the middle of January when he (Nyberg) reached that conclusion. (That he injured his eye by being struck by a piece of wire.) and spoke of it for the first time. Here is an admission that claim for compensation was made, whether oral or written is not stated, but had the claim been made in writing, under oath, at that time, no objection could now be made that the claim was not presented in time. The claimant says he made his claim orally and later, at the request of the officer to whom made, he wrote a letter. There is therefore evidence that a claim was made in writing within six months from the date of the happening of the accident, the earliest date of which is given as October 15th, and that the claim was under investigation and subsequently rejected, the date of which does not appear, but it was not rejected on account of not being in proper form, but because the company did not consider it meritorious.

The amendment to Section 10A was made for the purpose of requiring some formality in making claim for compensation and to prevent the perpetration of fraud, but it would seem that where a written claim was made and investigated and a great deal of correspondence carried on with regard to it and to its merits, and no objection made to the form in which presented at the time of presentment nor for a considerable time after the six month period had run, the claim had served every purpose it could possibly serve as a claim and that objection to form had been waived.

While the Act requires claims to be presented within six months and a failure to present claim within that time is held to deprive the Board of jurisdiction to award relief, (See Bushnell vs. Industrial Board, Ill., 114 N. E. 496; Seartz vs. Hartman Furniture and Carpet Company, 205 Ill. App. 330), yet it has been held that the necessity for a formal claim may be waived, (Roberts vs. Packing Company, 149 Pac. 413, Kan.) or removed by knowledge on the part of the employer and attempts at settlement, (Halverhourt vs. Southwestern Milling Company, Kan. 155 Pac. 916), or by a denial of liability, (Ackerson vs. National Zinc Company, 153 Pac. 530) or by his act and attitude showing that it would be unavailable for him, (Ackerson vs. National Zinc Company, 153 Pac. 530).

I am therefore of the opinion that form defects in the claim have been waived and that the claim should be considered upon its merits and either allowed or rejected, as the Board may consider the facts sufficient or insufficient to support it.

Respectfully,

S. C. FORD,

Attorney General.